March 16, 1995

DOCKET NO. G-002/AI-94-838

ORDER APPROVING AGREEMENT WITH CONDITIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
Dee Knaak	Commissioner

In the Matter of a Petition for Approval of Umbrella Gas Sales and Capacity Release Agreement Between Northern States Power Company - Gas Utility and Northern States Power Company (Wisconsin)

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PROCEDURAL HISTORY

I. The Filing

On September 7, 1994 Northern States Power Company - Gas Utility (NSP Gas or the Company) filed a petition under the affiliated interest statute, Minn. Stat. § 216B.48, for approval of a gas sales and capacity release agreement with its affiliate, Northern States Power Company (Wisconsin) (NSPW). Under the terms of the agreement the companies would buy from and sell to one another surplus short-term gas supplies and surplus firm pipeline transportation capacity. Transactions would occur on an as-needed basis and would occur only after competitive bidding.

The Company also requested a variance of Minn. Rules, part 7825.2100, which requires prior approval of each individual transaction over a specified monetary amount. In the alternative, the Company argued that amendments to the affiliated interest statute permitting approval of "regular recurring transactions under a general or continuing arrangement" allowed approval of the umbrella agreement to serve in place of approval of each transaction.

II. The Department's Comments

On November 7, 1994 the Department of Public Service (the Department) filed comments asking the Commission to grant the variance and approve the agreement with the following conditions and modifications:

1. Limit the agreement initially to a one-year term.

2. Require the Company to retain complete records of all transactions under the agreement, including copies of all bids, as required under Minn. Rules, part 7825.2300.

3. Modify the agreement's bidding requirements to require at least three bids from non-affiliates and to prohibit NSPW from submitting the final bid.

4. Require quarterly filing of Spot Purchasing Forms for all transactions in which NSPW submitted a bid.

5. Require quarterly filings giving the following information for each gas commodity sale between NSP Gas and NSPW:

    a. total price and quantity of gas sold;

    b. total cost to NSP Gas of gas sold;

    c. market price for gas sold according to Gas Daily on the date the transaction was agreed to.

6. Require quarterly filings giving the following information and documentation for each release or acquisition of transportation capacity between NSP Gas and NSPW:

    a. a copy of NSPW's pipeline Electronic Bulletin Board posting with all bid information included;

    b. the tariffed interruptible transportation rate for the applicable quantity with similar delivery and receipt points, where applicable;

    c. a copy of all other transactions posted to the pipeline Electronic Bulletin Board on the date of the bid or capacity release.

7. Require that any release of capacity by NSP Gas to NSPW through its Viking pipeline affiliate be at the maximum rate.

8. Require NSP Gas to make two filings demonstrating that its firm gas supply contracts are at appropriate levels, the first within 30 days of this Order and the second within 30 days of completion of the first year of the agreement.

9. Maintain for on-site inspection certain updated information provided to NSP Gas under sections 5.1(a), 5.1(d), 5.2, and 5.3 of the agreement.

10. Grant the Commission and the Department the same right to inspect NSPW's books and records as NSP Gas is granted under the agreement.

III. The Company Response

On November 17, 1994 the Company filed comments stating the Department's recommendations were so burdensome they would offset any economic benefit under the agreement. The Company also claimed the proposed reporting requirements would inhibit bidding, since competitors would be reluctant to file bids that would be disclosed to anyone, even a public agency.

For these reasons, the Company said it would withdraw from the agreement rather than incorporate all modifications proposed by the Department. The Company stated it did not object, however, to recommendations 2, 7, and 9.

The matter came before the Commission on January 5, 1995. At that hearing the Department revised its recommendations to require only two bids from non-affiliates per transaction.

FINDINGS AND CONCLUSIONS

IV. Summary of Commission Action

The Commission will approve the agreement under the affiliated interest statute and will for one year vary the rule requiring approval of each individual transaction. The Commission will require a supplementary filing listing all outstanding contracts between NSP Gas and NSPW and their effective dates.

The Commission will adopt the Department proposals with which the Company agreed. It will allow the Company to retain for on-site inspection the information and documentation the Department asked to have filed, but will require the Company to include in its annual Automatic Adjustment of Charges report monthly summaries of transactions with NSPW. It will require the same information on transactions with Cenergy, another affiliate.

The Commission will require that all transactions under the contract include at least two bids from non-affiliates. Instead of prohibiting NSP Gas from accepting a last bid from NSPW, the Commission will prohibit disclosure of competing bids to NSPW.

The Commission will require the Company to demonstrate now and after a year's experience with the agreement that its firm gas supply contracts are at appropriate levels.

The Commission will revise the Company's proposed accounting methods, requiring use of FERC Account 804 to record gas purchases and sales, FERC Account 805.1 for capacity releases, and FERC Account 858 for capacity purchases. Finally, the Commission will require the Company to provide the Commission and the Department the same access the agreement grants the Company to NSPW's books and records.

These actions will be explained in turn.

V. Agreement Approved; Further Filings Required

The Commission finds that the umbrella agreement between NSP Gas and NSPW is reasonable and consistent with the public interest. As federal efforts to introduce market incentives to the gas industry have intensified, managing gas supply has become increasingly complex. Purchases on the spot market have proliferated. Local distribution companies need as many trading partners as possible to get the best prices when buying or selling on the spot market.

For NSP Gas, NSPW is a potentially valuable trading partner. Given the highly competitive nature of the spot market and the Company's plans to buy and sell through competitive bidding, this agreement is clearly not among the riskiest of affiliate transactions. Equally clearly, it holds potential for reducing NSP Gas's overall gas purchase costs. For all these reasons, the Commission will approve the agreement, subject to safeguards to prevent self-dealing.

Finally, the Commission notes that the Company failed to file a list of all agreements between itself and NSPW, as required under Minn. Rules, part 7825.2200. The Commission will require the Company to file the list, together with the effective date of each agreement, within 30 days of the date of this Order.

VI. Variance Granted

The Company requested a variance to Minn. Rules, part 7825.2100, which requires prior approval of each individual transaction over a specified monetary amount. In the alternative, the Company argued that amendments to the affiliated interest statute permitting approval of "regular recurring transactions under a general or continuing arrangement" allowed approval of the umbrella agreement to serve in place of approval of each transaction. Minn. Stat. § 216B.48, subd. 3.

Given the request for a variance, the Commission need not construe the statute. The Commission agrees with the Company that the three-prong variance test has been met. Requiring approval of each transaction would impose an excessive burden; granting continuing approval would not adversely affect the public interest; granting continuing approval would not violate any applicable legal standard. Minn. Rules, part 7829.3200. The Commission will therefore grant the variance.

Under Minn. Rules, part 7829,3200, subp. 3 variances automatically expire in one year unless the Order granting them states otherwise or unless they are renewed by the Commission. The one year limit is especially appropriate here, since it would allow mid-course examination of activity under the agreement and the effectiveness of documentation requirements.

VII. Documentation and Reporting Requirements

The Department proposed a battery of documentation and reporting requirements to ensure that transactions under the agreement can be monitored effectively for self-dealing and cross-subsidization. The Commission shares the Department's commitment to adequate monitoring and believes the Company should retain all information the Department listed.

The Commission agrees with the Company, however, that for nearly all of this material, retention for on-site review will suffice. Not only would filing all material be administratively burdensome, it would carry the potential for discouraging bidding. The Commission believes on-site review will serve the same purpose as mandatory filing without the same drawbacks.

The Commission will, however, require that the Company's annual Automatic Adjustment of Charges Report include monthly summaries of transactions with NSPW, as well as with Cenergy, another affiliate.

VIII. The Bidding Process

The Commission agrees with the Department and the Company that there should be two bids from non-affiliates before transactions under the agreement are completed. The Commission will so require.

The Department's recommendation to protect the integrity of the bidding process by prohibiting acceptance of NSPW's bid if it is the last one, is more troublesome. If NSPW's bid were always the last, there would be grounds for concern. That would not happen in a truly competitive environment. Neither would it happen, however, that NSPW's bid would never be the last. The Commission believes the most straightforward way to protect the integrity of the bidding process is to state the obvious, that disclosing prior bids to NSPW is prohibited, and to monitor performance under the agreement closely enough to promptly detect any bidding irregularities.

IX. Gas Supply Contracts

The Commission agrees with the Department that one of the secondary effects of competition which bears watching is the possibility that local distribution companies will over-buy for resale, especially resale to affiliates. This would of course expose ratepayers to unnecessary risk.

To guard against this possibility with NSP Gas and NSPW, and to ensure good baseline information, the Commission will require the Company to make two filings demonstrating that its firm gas supply contracts are at appropriate levels. The first filing will be due within 30 days of the date of the Order. The second will be due within 30 days of the end of the first year of the agreement.

X. Accounting and Auditing Issues

The Company proposed to record gas purchases and sales in FERC Account 804 and capacity releases and purchases in FERC Account 805.1. Purchased capacity is normally recorded in FERC Account 858, and the Commission will require that procedure be followed here as well.

Finally, the Commission will require the Company to provide the Commission and the Department the same access the agreement grants the Company to NSPW's books and records. Initially, there was disagreement or miscommunication between the Company and the Department on what this means. The parties now appear to agree that the access provided under the agreement is limited to that necessary to resolve billing errors or disputes.

The Commission notes, however, that it has full statutory authority to require NSP Gas to disclose and document NSPW's costs of performance under the agreement. Minn. Stat. § 216B.48, subd. 3. The Commission did not require disclosure and documentation here because the agreement's reliance on competitive bidding substantially reduces opportunity for self-dealing.

ORDER

1. The agreement at issue is approved under Minn. Stat. § 216B.48, subject to the conditions set forth above and to those modifications and conditions proposed by the Department to which the Company agreed.

2. Minn. Rules, part 7825.2100 is varied for one year to allow individual transactions under the agreement to occur without being individually approved by the Commission.

3. Within 30 days of the date of this Order the Company shall make a supplementary filing listing all outstanding contracts between NSP Gas and NSPW and the effective date of each contract.

4. The Company shall retain and make available for on-site inspection all information and documentation identified in the Department's November 7, 1994 comments.

5. The Company shall include in future Annual Automatic Adjustment of Charges reports monthly summaries of transactions between itself and NSPW and between itself and Cenergy.

6. In transactions under the agreement at issue the Company shall not accept a bid from NSPW until it has received at least two bids from non-affiliates. The Company shall not disclose other suppliers' bids to NSPW.

7. Within 30 days of the date of this Order the Company shall make a filing demonstrating that its firm gas supply contracts are at appropriate levels.

8. Within 30 days of the end of the first year of performance under the agreement at issue the Company shall make a filing demonstrating that its firm gas supply contracts are at appropriate levels.

9. The Company shall use FERC Account 804 to record gas purchases and sales, FERC Account 805.1 to record capacity releases, and FERC Account 858 to record capacity purchases.

10. The Company shall provide the Commission and the Department the same access the agreement grants the Company to NSPW's books and records.

11. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)